Nova Scotia

Department of
Attorney General

NOVA SCOTIA

DEPARTMENT OF ATTORNEY GENERAL

PROGRESS REPORT

IMPLEMENTATION OF THE RECOMMENDATIONS OF THE ROYAL COMMISSION ON THE DONALD MARSHALL, JR. PROSECUTION

AUGUST 15, 1990

IMPLEMENTATION OF MARSHALL COMMISSION RECOMMENDATIONS

PROGRESS REPORT

1. Review body

We recommend that the provincial Attorney General commence discussions with the federal Minister of Justice and the other provincial Attorneys General with a view to constituting an independent review mechanism - an individual or a body - to facilitate the re-investigation of alleged cases of wrongful conviction.

2. Powers of review body

We recommend that this review body have investigative power so it may have complete and full access to any and all documents and material required in any particular case, and that it have coercive power so witnesses can be compelled to provide information.

Response:

The Government accepted these recommendations.

Action to Date:

On the initiative of the Attorney General of Nova Scotia, these items were discussed at the Federal/Provincial Territorial Attorneys General and Ministers of Justice Annual Meeting June 15, 1990 in Niagra-on-the-Lake. As a result, the Ministers have established a national committee of senior officials to consider the Marshall Commission's recommendations and have directed their Deputy Ministers to make recommendations to them based on the committee's report.

3. **Judicial Inquiry to consider compensation claims**

We recommend that when a person is found to have been wrongfully convicted, a judicial inquiry be constituted to consider any claim for compensation. The person or persons appointed to this inquiry should be completely independent of any involvement with the administration of justice in the province which gave rise to the wrongful conviction.

4. **No limit on compensation amount**

We recommend that there be no preset limit on the amounts recoverable with respect to any particular claim or any particular aspect of a claim.

5. **Factors to be considered**

We recommend that any judicial inquiry be entitled to consider any and all factors which may have given rise to the wrongful conviction, imprisonment or the continuation of that imprisonment.

6. **Legal fees and disbursements**

We recommend that appropriate legal fees and disbursements incurred by or on behalf of the wrongfully convicted person be paid as part of the inquiry's expenses.

7. **Report to be public**

We recommend that the inquiry report become a public document.

Response:

The Government accepted these recommendations.

Action to Date:

These policies have been implemented in Nova Scotia.

The Report of the Commission of Inquiry Concerning the Adequacy of Compensation Paid to Donald Marshall, Jr. was made public July 5, 1990. The Commission was conducted in accordance with Recommendations 3 to 7.

Recommendations 3 to 7 were discussed at the Federal/Provincial/Territorial Attorneys General and Ministers of Justice Annual Meeting in mid-June, 1990. A resolution was passed directing Deputy Ministers to strike a Committee to review the current Guidelines for Compensation for Wrongfully Convicted and Imprisoned Persons. This review will include an examination of the Marshall Commission recommendations. The Deputy Ministers will consider the Committee's report and make recommendations for changes in the current guidelines to be tabled at the next Federal/Provincial/Territorial meeting of Ministers responsible for Justice.

8. Marshall compensation

We recommend that Government re-canvass the adequacy of the compensation paid to Marshall in light of what we have found to be factors contributing to his wrongful conviction and continued incarceration.

Response:

The Government accepted this recommendation.

Action to Date:

The Report of the Commission of Inquiry Concerning the Adequacy of Compensation Paid to Donald Marshall, Jr. was made public July 5, 1990. Disbursements recommended by that Report have been made.

9. Policy on Race Relations

We recommend that the Departments of the Attorney General and Solicitor General adopt and publicize a Policy on Race Relations that has as its basis a commitment to employment equity and the elimination of inequalities, based on race, in these Departments and their agencies and the reduction of racial tensions between these Departments and the communities with which they interact.

Response:

The Government accepted this recommendation.

Action to Date:

The Department of Attorney General has assembled an internal working group to develop a Race Relations Policy. Consultation with various visible minorities will play a major role in this process. As well, officials in other jurisdictions are being consulted to gain the benefit of their experience. This policy will be made public when it has been finalized.

10. Cabinet Committee on Race Relations

We recommend that a Cabinet Committee on Race Relations be established which would include the Attorney General and Solicitor General. This Committee should meet regularly with representatives of visible minority groups in order to assure the input of these groups in matters of criminal justice.

Response:

The Government accepted this recommendation.

Action to Date:

The Government has established a Cabinet Committee on Race Relations. Permanent members are the Premier, the Minister responsible for the Human Rights Act, the Attorney General, the Solicitor General, the Minister of Community Services, the Minister of Education, the Minister responsible for Multiculturalism, and the Minister responsible for the Civil Service Commission.

Discussions among members of this committee are reflected in a number of initiatives, especially within the realm of education. Department of Education projects include the evaluation of learning materials for bias, prejudice and stereotyping and the continuing development of materials on specific ethnic groups.

This Cabinet Committee will meet regularly with the leadership of minority communities and the Human Rights Commission in order to develop strategies to improve race relations in the Province and to ensure that Government minority initiatives are implemented fully and sensitively.

11. Dalhousie Law School's minority admissions program

We recommend that the Dalhousie Law School's minority admissions program for Micmacs and indigenous Blacks receive the financial support of the Governments of Canada and Nova Scotia, and the Nova Scotia Bar.

Response:

The Government accepted this recommendation.

Action to Date:

In 1989-90 the Government contributed $15,000 to the Minority Admissions Program at Dalhousie Law School. Financial support has been increased to $ 50,000. for 1990-91.

Summer employment in the Department of Attorney General for participants in this program was offered. One student is currently working in the Halifax County Crown Prosecutor's office. Three other students in the Minority Admissions Program chose to accept summer employment in private legal practices.

12. Appointment of judges and board members

We recommend that Governments consider the needs of visible minorities by appointing qualified visible minority judges and administrative board members whenever possible.

Response:

The Government accepted this recommendation.

Action to Date:

Lawyers in Nova Scotia wishing to become judges in the Provincial or Family Courts are invited to make application to the Judicial Appointments Review Committee.

With regard to boards and tribunals, the Government has made efforts to involve citizens through application invitations in newspaper advertisements.

In the case of visible minorities, a special effort to develop a roster of qualified people has been undertaken. Letters inviting candidates for consideration for appointments to such administrative boards have been sent to leaders in the Native and Black communities throughout Nova Scotia.

13. Programs for law students, lawyers, judges

We recommend that the Dalhousie Law School, the Nova Scotia Barristers Society and the Judicial Councils support courses and programs dealing with legal issues facing visible minorities, and encourage sensitivity to minority concerns for law students, lawyers and judges.

33. Responsibility of Chief Judges

We recommend that the Chief Justices and the Chief Judges of each court in Nova Scotia exercise leadership within his or her area of responsibility to ensure fair treatment of visible minorities in the criminal justice system.

Response:

The Government endorsed these recommendations.

Action to Date:

A Judicial Education Conference for judges in all courts in Nova Scotia was recently held in Halifax. The conference was organized by the Canadian Judicial Centre which is financially supported by the Departments of Attorney General and Community Services. Sessions at the conference included such topics as race relations and cultural diversity, Native peoples and the courts, gender equality and sentencing disparity. This is an example of the kind of programs that are emerging to encourage sensitivity to minority concerns in the justice system.

Government lawyers, including Crown Prosecutors, are encouraged to participate in courses and programs offered through the Dalhousie Law School, the Nova Scotia Barristers Society and the Canadian Bar Association dealing with legal issues facing visible minorities.

As well, training for Crown Prosecutors in this area is incorporated in training programs currently being devised within the Department of the Attorney General.

14. Programs for Crown prosecutors

We recommend that the Attorney General establish continuing professional education programs for Crown prosecutors, which would include:

(a) an exposure to materials explaining the nature of systemic discrimination toward Black and Native peoples in Nova Scotia in the criminal justice system; and

(b) an exploration of means by which Crown prosecutors can carry out their functions so as to reduce the effects of systemic discrimination in the Nova Scotia criminal justice system.

Response:

The Government accepted this recommendation.

Action to Date:

Canadian and international research relating to this issue is being examined to determine which approach to systemic discrimination sensitization is most effective.

Sensitivity training is being incorporated into the Department's ongoing professional development program for legal staff. A session entitled "Marshall Legacy -- The Implications for the Legal Profession" dealing with minority needs and systemic discrimination sensitization is on the agenda for the 1990 Fall Workshop of the Department's legal staff. This workshop is jointly sponsored by the Attorney General's Department of Nova Scotia and the Canadian Bar Association.

16. Public Legal Education programs and funding

We recommend that the Public Legal Education Society consult and work with Native and Black groups to develop and provide legal materials and services for minority users. These initiatives cannot be undertaken without specific funding. This should be provided where necessary by Government.

Response:

The Government endorsed this recommendation.

Action to Date:

The Government supports the activities of the Public Legal Education Society and has designated the Society to receive federal funding for public legal education. The Government has provided financial assistance for 1990-91 specifically to enable the Public Legal Education Society to develop and provide legal materials and services for minority users.

Nova Scotia Micmac and the Criminal Justice System

20. Native Criminal Court

We recommend that a community-controlled Native Criminal Court be established in Nova Scotia, initially as a five-year pilot project, incorporating the following elements:

(a) a Native Justice of the Peace appointed under Section 107 of the Indian Act with jurisdiction to hear cases involving summary conviction offences committed on a reserve;

(b) diversion and mediation services to encourage resolution of disputes without resort to the criminal courts;

(c) community work projects on the reserve to provide alternatives to fines and imprisonment;

(d) aftercare services on the reserve;

(e) community input in sentencing, where appropriate; and

(f) court worker services.

21. Native Justice Institute

We recommend that a Native Justice Institute be established with Provincial and Federal Government funding to do, among other things, the following:

(a) channel and coordinate community needs and concerns into the Native Criminal Court;

(b) undertake research on Native customary law to determine the extent to which it should be incorporated into the criminal and civil law as it applies to Native people;

(c) train court workers and other personnel employed by the Native Criminal Court and the regular courts;

(d) consult with Government on Native justice issues;

(e) work with the Nova Scotia Barristers Society, the Public Legal Education Society and other groups concerned with the legal information needs of Native people; and

(f) monitor the existence of discriminatory treatment against Native people in the criminal justice system.

22. Tripartite forum on Native issues

We recommend that a tripartite forum (Micmac/Provincial/Federal Government) similar to the Ontario Indian Commission be established to mediate and resolve outstanding issues between the Micmac and Government, including Native justice issues.

24. Native court workers

We recommend that the Provincial and Federal Governments, in consultation with Native communities, work together to establish a Native court worker program, as an immediate first step in making the criminal justice system more accessible to Native people.

25. Sittings of Provincial Courts on reserves

We recommend that the Chief Judge of the Provincial Court take steps to establish regular sittings of the Provincial Courts on Nova Scotia reserves.

29. Native Justice Committee

We recommend that the advice of leaders chosen by the Native community and sitting as a Native Justice Committee be sought by judges in sentencing Natives, where possible.

Response:

The Government recognized merits in each of these recommendations, with Recommendation 22, a Tripartite Forum on Native issues, providing the cornerstone for addressing these initiatives.

Action to Date:

The establishment of a Tripartite Forum is critical to the development of a permanent consultation process and the implementation of these proposals.

Recognizing that the difficulties faced by Native people in Nova Scotia are largely economic and social, it is the Government's hope that the mandate of the Forum will reach beyond the limits of the Marshall Commission recommendations.

A great deal of time and energy has been spent in setting up the Tripartite Forum for these very important reasons.

The Provincial Government invited minority leaders and federal representatives to an organizing meeting in the spring. Further consultations are underway in order to firmly establish the mandate of the Forum and to provide funding to enable the three major native political groups to participate.

Realizing that items such as a Native Criminal Court, a Native Justice Institute, Native Courtworkers, the sitting of Provincial Courts on reserves and the establishment of a Native Justice Committee can only be implemented with the full cooperation of the Native community, it is felt that time spent now in establishing the Forum will facilitate the implementation of these recommendations.

23. Micmac interpreters

We recommend that all courts in Nova Scotia have the services of an on-call Micmac interpreter for use at the request of Micmac witnesses or accused.

Response:

The Government accepted this recommendation.

Action to Date:

The Department of Attorney General currently pays for interpreters for witnesses and all accused persons who might otherwise be unable to participate and understand their trial.

26. Legal Aid funding

We recommend that Nova Scotia Legal Aid be funded to permit them to:

(a) specifically assign lawyers to work with Native clients to develop a specialization with respect to the concerns of Native people; and

(b) hire a Native social worker/counsellor to, among other things, act as a liaison between Native people and the Legal Aid service.

34. Legal Aid funding for Black clients

We recommend that, because of the dependence of Black clients on legal aid services, the funding of legal aid in Nova Scotia be re-examined to ensure that there are sufficient counsel to properly serve minority clients and to engage in proactive programs in minority communities.

Response:

The Government endorsed recommendation 26 and accepted recommendation 35.

Action to Date:

The Attorney General has asked the Nova Scotia Legal Aid Commission to examine its structure and funding with respect to service to minority clients and in minority communities. This review is currently underway and will be presented for discussion and action at the Nova Scotia Legal Aid Commission's annual meeting in October.

It is important to note that the Nova Scotia Legal Aid Commission is funded by the provincial and federal governments. It operates independently of government under the Legal Aid Act.

The Legal Aid Commission is looking into opening a Dartmouth office in order to provide service to the Eastern Shore and Preston areas. The government has provided an initial commitment of funds for this purpose.

The government has also provided funding to the Legal Aid Commission to hire a social worker/counsellor.

35. Director of Public Prosecutions

We recommend that:

(a) there be created by statute the office of Director of Public Prosecutions, and that the holder of this office:

(i) be a member of the bar of Nova Scotia (or equivalent) for a minimum of ten years;

(ii) be appointed by the Governor in Council after consultation with the officers of the Nova Scotia Barristers Society and with the two Chief Justices of the Superior Courts in Nova Scotia, for a term of ten years, with eligibility for reappointment;

(iii) be removable for cause by the Governor in Council only after a resolution from the provincial Legislature approving such action;

(iv) be paid and given employment benefits not less than those of a judge of the County Court of Nova Scotia, and have the status of a departmental "deputy head";

(b) the duties and responsibilities of the Director of Public Prosecutions include:

(i) the exercise of all of the functions of the Attorney General as agent and deputy of the Attorney General in relation to the administration of criminal justice in the province, subject to paragraph (c) below; and in particular;

(ii) regular consultation with the Attorney General concerning all aspects of public prosecution and the administration of the prosecution service;

(iii) the direction of the prosecution service of the province, including supervision of those functions presently exercised by the Director (Prosecutions) and the Director (Criminal);

(iv) the presentation of an annual report to the Attorney General on the conduct of public prosecutions in the province, which shall describe, among other matters, any personal interventions by the Attorney General pursuant to paragraph (c)(i);

(c) the Attorney General continue to exercise the duties and responsibilities traditionally accorded to that office in relation to the administration of criminal justice, subject only to the limitations which follow:

(i) where he or she deems it necessary, the Attorney General may intervene in a prosecution contrary to the advice of the Director of Public Prosecutions but only through the use of written instructions which shall be published within 30 days of their issuance in the Royal Gazette, *or following expiry of the appeal period, whichever is later;*

(ii) the Attorney General shall, after consultation with the Director of Public Prosecutions, issue guidelines for the exercise of prosecutorial discretion which shall be tabled in the provincial legislature as soon as is practicable after their issuance; and

(iii) the Attorney General shall table in the provincial legislature as soon as is practicable the annual report received from the Director of Public Prosecutions pursuant to paragraph (b)(iv).

Response:

The Government accepted the intent of this recommendation.

Action to Date:

The Government appointed a Director of Public Prosecutions in March, 1990. The D.P.P. is responsible for all prosecutions and appeals conducted on behalf of the Crown. The D.P.P. may consult with the Attorney General when he deems it appropriate. However, any direction the Attorney General gives the Director with respect to any prosecution must be in writing and published. The Director will report annually to the House of Assembly.

Legislation to establish the office of Director of Public Prosecutions and to safeguard its independence was passed during the 1990 Session of the Legislature. Proclamation is set for September 1, 1990.

The Attorney General, as the chief law officer of the Crown, is accountable to the Legislature and ultimately to the people for his or her actions and those of the Director of Public Prosecutions. The principle of ministerial responsibility does not compromise the degree of independence enjoyed by the Director of Public Prosecutions. Nova Scotia has adopted the Commonwealth of Australia model which the Commissioners praised. It permits the Director of Public Prosecutions to exercise the maximum degree of independence when making prosecutorial decisions while maintaining the principle of ministerial responsibility.

36. Policy statement on the role of police

We recommend that the following policy statement be included in the Crown Prosecutors' Manual:

(a) in the investigation of offences prior to the laying of charges, it is understood that the police officers are to carry out their duties in accordance with the law and general standards, practices and policies established by the Solicitor General, but in consultation with the appropriate Crown prosecutor where necessary; and

(b) after the laying of charges, police shall carry out any investigations in accordance with the instructions of the Attorney General or appropriate prosecutor with a view to preparation of the case for presentation in court.

Response:

The Government accepted this recommendation.

Action to Date:

This policy statement will be issued to the prosecution service pursuant to s. 6(a) of the Public Prosecutions Act which comes into effect on September 1, 1990

This policy statement will also be incorporated in the new Crown Attorneys' Manual. The current Crown Prosecutors' Manual (the "Blue Book") is in the process of being revised by a committee of Crown Attorneys of the Public Prosecution Service. The work of the committee will be reviewed by the Director of Public Prosecutions and other senior officials, including the newly appointed Regional Crown Attorneys, to ensure that the manual conforms with the recommendations of the Commission and is of practical benefit to Crown Attorneys.

37. Laying of charges

We recommend that:

(a) police officers be informed in general instructions from the Solicitor General that they have the ultimate right and duty to determine the form and content of charges to be laid in any particular case according to their best judgment, subject to the Crown's right to withdraw or stay the charges after they have been laid;

(b) within each police force there be a clear written policy on resolving disagreements between the police and Crown over the laying of charges, and that such policy provides that no charge shall be laid contrary to the advice of the Crown unless and until discussions have been held between the highest levels of police and Crown;

(c) within each police force and within the Department of Attorney General there be a clear written directive requiring absolute confidentiality and secrecy of the identity of persons being investigated other than on a need to know basis within the police force and the Department;

(d) prosecutors be informed in general instructions from the Attorney General that police officers have the right and the duty to determine the form and content of charges to be laid in any particular case, subject to the Crown's right to withdraw or stay the charges after they have been laid;

(e) police officers and Crown prosecutors be informed by their respective departmental superiors that police are encouraged to consult with the appropriate prosecutor concerning the drafting of informations, where such consultation might be thought useful; and

(f) the Attorney General institute a system of post-charge screening in appropriate locations in the province (initially as a pilot project) to ensure that no charges which are not strictly necessary in accordance with the evidence and the public interest shall go forward.

Response:

The Government accepts this recommendation.

Action to Date:

Subsections (a) and (b) do not require action by the Department of Attorney General.

Subsections (c), (d) and (e) are policy statements that will be issued to the prosecution service pursuant to s. 6(a) of the Public Prosecutions Act.

With regard to subsection (f), senior officials of the Public Prosecution Service will select two locations in which to operate a post-charge screening pilot project, once all four Regional Crown Attorneys have been appointed (see Recommendation 45.) Those appointments will be made by September 15, 1990.

38. Factors to be considered when stopping prosecutions

We recommend that:

(a) the Attorney General promulgate a clearly stated policy concerning the public interest factors which should, and should not, be considered in deciding whether to undertake or stop a prosecution even in the face of evidence which could sustain a conviction;

(b) the factors which might arise for consideration in determining whether the public interest requires a prosecution, include:

(i) the triviality of the alleged offence or that it is of a "technical" nature only;

(ii) the age, physical health, mental health or special infirmity of an alleged offender or witness;

(iii) the staleness of the alleged offence;

(iv) the degree of culpability of the alleged offender (particularly in relation to other alleged parties to the offence);

(v) the likely effect of a prosecution on public order and morale;

(vi) the obsolescence or obscurity of the law;

(vii) whether the prosecution would be perceived as counterproductive (such as by making a "martyr" of an alleged offender or by providing publicity to an alleged hate propagandist);

(viii) the availability of efficacy of any alternatives to prosecution in the light of the purposes of the criminal sanction;

(ix) the prevalence of the alleged offence and any related need for deterrence;

(x) whether the consequences of any resulting conviction would be unduly harsh or oppressive;

(xi) any entitlement of the State or other person to compensation, reparation or forfeiture if prosecution action is successful;

(xii) the attitude of the victim of the alleged offence to a prosecution;

(xiii) the likely length and expense of a trial;

(xiv) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;

(xv) the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;

(xvi) the necessity for the maintenance of public confidence in legislatures, courts and the administration of justice;

(c) the factors which are to be excluded from consideration in determining whether the public interest requires a prosecution, include:

(i) the alleged offender's race, religion, sex, national origin, political associations, or beliefs;

(ii) the prosecutor's personal feelings concerning the victim or the alleged offender;

(iii) any partisan political advantage or disadvantage which might flow from the decision to undertake or stop a prosecution; or

(iv) the possible effect on the personal or professional circumstances of those responsible for the prosecution decision;

(d) where the prosecutor decides not to undertake or to stop a prosecution by reason of a public interest factor such as those mentioned in (b), a notation of this decision be placed in the file relating to the case in question;

(e) the Solicitor General bring the foregoing public interest factors relevant to the prosecution of offences to the attention of police forces operating within the province.

Response:

The Government accepts this recommendation.

Action to Date:

The Public Prosecution Service is reviewing the academic literature which discusses the factors to be taken into account when deciding whether a prosecution should be terminated notwithstanding evidence capable of sustaining a conviction. The prosecution policies of the Crown Prosecution Service in England and Wales and other Commonwealth jurisdictions are also being considered.

When a list of factors have been compiled, the Director of Public Prosecutions and senior officials of the prosecution service, including the Regional Crown Attorneys, will make a recommendation to the Attorney General as to those factors considered by the prosecution service to justify the exercise of Crown discretion to terminate

proceedings notwithstanding the availability of evidence capable of sustaining a conviction. Professor Bruce Archibald of Dalhousie University, the author of a study paper on prosecuting officers and the administration of criminal justice in Nova Scotia prepared for the Marshall Commission, is working as a Crown Attorney with the Public Prosecution Service for one year and will be involved in this process.

39. Disclosure by Crown

We recommend that the Department of Attorney General of Nova Scotia urge the Federal Government to implement amendments to the Criminal Code *of Canada as follows:*

1. A justice shall not proceed with a criminal prosecution unless he is satisfied:

(a) that the accused has been given a copy of the information or indictment reciting the charge or charges against him in that prosecution; and

(b) that the accused has been advised of his rights to disclosure.

2(1) Without request, the accused is entitled, before being called upon to elect the mode of trial or to plead to the charge of an indictable offence, whichever comes first, and thereafter:

(a) to receive a copy of his criminal record;

(b) to receive a copy of any statement made by him to a person in authority and recorded in writing or to inspect such a statement if it has been recorded by electronic means; and to be informed of the nature and content of any verbal statement alleged to have been made by the accused to a person in authority and to be supplied with any memoranda in existence pertaining thereto;

(c) to inspect anything that the prosecutor proposes to introduce as an exhibit and, where practicable, receive copies thereof;

(d) to receive a copy of any statement made by a person whom the prosecutor proposes to call as a witness or anyone who may be called as a witness, and recorded in writing or, in the absence of a statement, a written summary of the anticipated testimony of the proposed witness, or anyone who may be called as a witness;

(e) to receive any other material or information known to the Crown and which tends to mitigate or negate the defendant's guilt as to the offence charged, or which would tend to reduce his punishment therefore, notwithstanding that the Crown does not intend to introduce such material or information as evidence;

(f) to inspect the electronic recording of any statement made by a person whom the prosecutor proposes to call as a witness;

(g) to receive a copy of the criminal record of any proposed witness; and

(h) to receive, where not protected from disclosure by the law, the name and address of any other person who may have information useful to the accused, or other details enabling that person to be identified.

2(2) The disclosure contemplated in subsection (1), paragraphs (d), (e) and (h) shall be provided by the Crown and may be limited only where, upon an inter partes *application by the prosecutor, supported by evidence showing a likelihood that such disclosure will endanger the life or safety of such person or interfere with the administration of justice, a justice having jurisdiction in the matter deems it just and proper.*

2(3) Subsection (1) imposes a continuing obligation on the prosecutor to disclose the items as above provided.

2(4) A statement referred to in sub-paragraph (b), (d) or (f) of subsection (1) does not include a communication that is governed by the "Invasion of Privacy" provisions of the Criminal Code.

3. Where a justice having jurisdiction in the matter is satisfied that there has not been compliance with the provisions of subsections 2(1) and 2(2) above, he shall, at the accused's request, adjourn the proceedings until, in his opinion, there has been compliance, and he may make such other order as he considers appropriate in the circumstances.

Response:

The Government accepted the intent of this recommendation.

Action to Date:

At the request of the Attorney General of Nova Scotia, the amendments to the Criminal Code recommended by the Commission were discussed with Federal/Provincial/Territorial Attorneys General and Ministers of Justice at their annual meeting in Niagara-on-the-Lake, Ontario, in June of this year. Following a discussion of the issues, officials were directed to prepare a report for Deputy Ministers setting out recommendations regarding disclosure of evidence by the Crown. Representatives of the Federal Minister of Justice were invited to participate in preparation of the report, in recognition of the prosecution role of the Federal Minister of Justice. Pending receipt of this report, the Director of Public Prosecutions and other members of the Public Prosecution Service will be meeting with representatives of the police, judiciary and defence bar to discuss the Attorney General's current disclosure directive.

40. Application to limit disclosure

We recommend that no application to limit disclosure be made without the prior written approval of the Director of Public Prosecutions or a Deputy Attorney General.

Response:

The Government accepted this recommendation.

Action to Date:

The Director of Public Prosecutions or a Regional Crown Attorney must approve any withholding of information by the Crown.

41. Interim policy on disclosure

We recommend that until the proposed statutory amendments to the Criminal Code *are effected, the Attorney General adopt and implement as a matter of policy the duties of disclosure reflected in the preceding recommendation.*

Response:

The Government accepted this recommendation.

Action to Date:

The Attorney General has required Crown prosecutors to disclose information to the defence since 1980.

The disclosure policy statement was updated February 7, 1990 in response to the Marshall Commission Report. The following matters were added to the policy statement:

- Disclosure will include the names and addresses of potential witnesses balancing the principle of full and fair disclosure with the need to prevent endangering the life or safety of witnesses or interference with the administration of justice.

- The continuing obligation upon the Crown to make the accused aware of the existence of evidence which the Crown believes is otherwise relevant to the guilt or innocence of the accused, but not to evidence which will be called in rebuttal.

Crown Attorneys provide a copy of the guidelines to defence counsel or an accused person on request.

43. Plea discussions and agreements

We recommend that the existing policy directive on plea discussions and plea agreements be revised to clearly set out the basis for the exercise of discretion by Crown prosecutors in this area, and that such directive in particular set out the governing principles of openness, voluntariness, accuracy, appropriateness and equality.

Response:

The Government accepted this recommendation.

Action to Date:

The policy directive on negotiations with the defence concerning plea and sentence is being revised.

Prosecution manuals of several other provinces have been reviewed. Alternative policy approaches to plea negotiations are being considered by the Director of Public Prosecutions and senior officials of the Public Prosecution Service, including the Regional Crown Attorneys. This is being done with a view to developing practices and procedures which will best reflect the governing principles of openness, voluntariness, accuracy, appropriateness and equality.

44. Summaries to trial judges

We recommend the abolition of summaries to trial judges and the abolition of the practice of providing trial judges with copies of preliminary inquiry transcripts.

Response:

The Government accepted this recommendation.

Action to date:

Federal legislation to amend Section 551 of the Criminal Code is necessary to abolish the requirement to provide trial judges with copies of preliminary inquiry transcripts.

The Attorney General has written to his fellow provincial Ministers requesting their support in his efforts to petition the federal Minister of Justice to make this change.

The Chief Justice of the Trial Division of the Nova Scotia Supreme Court was consulted and she stated that the trial judges find the summary outlining the nature of the crown's case helpful and would like the practice to continue, provided that defence counsel receive such summaries in advance in order to properly represent their position.

Crown attorney's were instructed in July 1988 to ensure that defence counsel were provided with summaries in sufficient time to allow them to make any appropriate submissions.

45. Regional prosecuting officers

We recommend that a system of chief prosecuting officers for each region be adopted in order to create an effective middle level of management in Nova Scotia's prosecution service.

Response:

The Government accepted this recommendation.

Action to Date:

Mr. Jack Buntain, Q.C. was appointed Regional Crown Attorney - Western Region (Lunenburg, Queens, Shelburne, Yarmouth, Digby, Annapolis, Kings and Hants Counties) effective July 9, 1990.

Mr. Robert Parker, Q.C. was appointed Regional Crown Attorney - Central Region (Cumberland, Colchester, Pictou, Antigonish and Guysborough Counties) effective July 23, 1990.

Regional Crown Attorneys for the Cape Breton Region and the Halifax Region will be named by September 15, 1990.

74. Interviewing juveniles and the mentally unstable

We recommend that in cases where suspects and/or witnesses are juveniles or mentally unstable, investigating officers make special efforts to ensure they are treated fairly. Supportive persons from the witness/suspect viewpoint should be present during interviews.

Response:

The Government accepted this recommendation.

Action to Date:

A committee composed of representatives from the Departments of Attorney General, Community Services and Solicitor General and the Canadian Association for Community Living has developed a draft protocol for dealing with victims or witnesses with special needs during their involvement with the criminal justice system. This draft protocol is currently being reviewed by senior staff in the Departments of Attorney General, Solicitor General and Community Services.

82. Reinvestigations

We recommend that guidelines be developed by the Solicitor General and Attorney General Departments detailing procedures to be followed where it is necessary for there to be a reinvestigation of the work of a police force. Any such reinvestigation of the work of a municipal police department should be conducted by the RCMP, with out-of-province assistance if required. All reinvestigations should be thoroughly reviewed by the Department of Attorney General.

Response:

The Government accepted this recommendation.

Action to date:

A committee involving members of the Solicitor General and Attorney General's Departments as well as members of the RCMP and municipal police forces is being struck to draft these guidelines.

31. Amendments to Human Rights Act

We recommend that the Nova Scotia Human Rights Act be amended:

(a) to require that an annual report of the Commission's activities be submitted to the Minister who shall place the report before the Legislative Assembly;

(b) to specifically state that those parts of the justice system under provincial jurisdiction are included in the Act's coverage;

(c) to provide that where the Commission is unable to settle a complaint, and where the Commission recommends the appointment of a Board, it shall report to the Minister who shall appoint a Board of Inquiry (Section 32 now gives the Minister a discretion as to whether a Board shall be appointed); and

(d) to establish within the Commission a Race Relations Division reporting to the Commission through one or more members, at least one of whom shall be full time and designated as Race Relations Commissioner.

Response:

The Government endorsed the intent of this recommendation.

Action to date:

The Human Rights Act will be amended to require that an annual report of the Commission's activities by submitted to the Minister who shall place the report before the Legislative Assembly.

An annual report for 1989-90 has been prepared and is currently being printed.

Section 21 of the Human Rights Act states *"This Act binds Her Majesty in right of the Province and every servant and agent of Her Majesty"*. This includes those parts of the justice system under provincial jurisdiction.

An amendment to Section 32 of the Human Rights Act will be introduced to provide that where the Human Rights Commission is unable to settle a complaint and where the Commission recommends the appointment of a Board, it shall report to the Minister who shall appoint a Board of Inquiry. This will remove the Minister's discretion in this matter.

It is expected that a Human Rights Commission Director of Race Relations will be appointed before the end of the year. This will be done as part of the restructuring underway at the Commission. The Director of Race Relations will assume a proactive role by taking responsibility for the Commission's activities in such areas as Public Education, Public Information and Affirmative Action.

32. Funding for Human Rights Commission

We recommend that the Human Rights Commission be provided with sufficient resources to enable it to effectively carry out its present mandate and further responsibilities added by our recommendations, and in particular to enable it:

(a) to retain independent legal counsel; and

(b) to engage in an active public awareness program, particularly in the area of Native and Black concerns.

Response:

The Government accepted the intent of this recommendation.

Action to date:

Legal counsel is currently provided to the Human Rights Commission through the Attorney General's Department by a lawyer who also provides service to the Department of Municipal Affairs. This arrangement is viewed as workable though not completely ideal.

The restructuring of the Commission will see the appointment of a Director of Complaints Investigations. It is the Commission's intent that this position will require a law degree and a strong legal background.

The Commission is continuing to work very diligently to fulfill its commitment to an active public awareness program, as advocated by the Marshall Commission. Research into the information needs of the Black and Native communities continues so that human rights education is made available to these communities in the most appropriate and useful manner.